7966

(18,586.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 73.

JAMES McLOUGHLIN, PLAINTIFF IN ERROR,

vs.

THE RAPHAEL TUCK & SONS COMPANY, LIMITED.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the circuit court of the United States for the southern district of New York	1	1
Writ of error	1	1
Clerk's certificate	2	2
Summons	3	2
Notice	5	3
Complaint	6	3
Consent to substitution of attorneys	14	8
Answer	15	9
Extract from minutes of trial	22	13
Judgment	23	14
Bill of exceptions	24	14
Statement of plaintiff's case	24	15
Testimony for defendants	28	17
Testimony of Samuel Gabriel	28	17
Direct	28	17
Cross	31	19
Redirect	35	23

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 16, 1903.

INDEX.

	Original.	Print
Judge's certificate	36	23
Assignment of errors	37	23
Bond	38	24
Stipulation as to exhibits	41	26
Citation	41	26
Opinion	43	27
Judgment	46	29
Assignment of errors	47	29
Bond on writ of error	49	30
Order extending time to make return to writ of error	51	31
Citation	52	31
Acceptance of service of citation	53	32
Writ of error	54	32
Clerk's return and certificate	55	33

a United States Circuit Court of Appeals for the Second Circuit.

JAMES MCLOUGHLIN, Plaintiff in Error,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant in Error.

Transcript of Record.

Error to the circuit court of the United States for the southern district of New York.

[Stamped:] United States circuit court of appeals, second circuit. Filed Oct. 25, 1901. William Parkin, clerk.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between James McLoughlin, plaintiff, and The Raphael Tuck & Sons Company, Limited, defendant, a manifest error hath happened, to the great damage of the said James McLoughlin, plaintiff, as is said and appears by this complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States circuit court of appeals for the second circuit, at the city of New York, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 12th day of November, 1900, that the record and proceedings aforesaid being inspected, the said judges of the United States circuit court of appeals for the second circuit may cause further to be done
2 therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of October, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[L. S.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. H. LACOMBE
1—73

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of James McLoughlin, plaintiff in error, against The Raphael Tuck & Sons Company, Limited, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Stamp.)

(Endorsed:) The U. S. circuit court of appeals for the second circuit.—James McLoughlin, plaintiff in error, *vs.* The Raphael Tuck & Sons Company, Ltd., defendant in error.—Writ of error.—A. Bell Malcomson, attorney for plaintiff in error, 132 Nassau St.—Due service of a copy of the within writ of error is hereby admitted this twentieth day of October, 1900. Goepel & Raegener, attorneys for defendant in error.

United States Circuit Court, Southern District of New York.

JAMES MCLOUGHLIN, Plaintiff,
against
RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant. }

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 27th day of July, in the year one thousand eight hundred and ninety-eight.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

A. BELL MALCOMSON,
Plaintiff's Attorneys.

Office and post office address, 132 Nassau street, borough of Manhattan, New York city.

(Endorsed:) United States circuit court, southern district of New York.—James McLoughlin, plaintiff, *vs.* Raphael Tuck & Sons Company, Ltd., defendant.—Summons.—A. Bell Malcomson, plaintiff's attorney.—To the defendant within named: Take notice, that upon default judgment will be taken for the sum of $8,300 *dollars* in money, with interest from the 24th day of July, 1898, besides costs according to the provisions of section 4963 of the Revised Statutes of the United States. A. Bell Malcomson, plaintiff's attorney, 132 Nassau St., New York city. I hereby certify, that on the 1st day of August, 1898, at the city of New York, in my district, I personally served the within summons upon the within named Raphael Tuck & Sons Company, Limited, by exhibiting to Chas. Kaufman, president of said company, the within original, and at the same time leaving with him a copy thereof. William Henkel, United States marshal, southern district of New York. Dated Aug. 2nd, 1898. U. S. circuit court.—Filed Aug. 2, 1898.—John A. Shields, clerk.

5 United States Circuit Court of Appeals for the Second Circuit.

JAMES MCLAUGHLIN, Plaintiff in Error,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant in Error.

Messrs. Goepel & Raegener, att'ys for defendant.

GENTLEMEN: Please take notice that I shall apply to one of the justices of this court on Monday, October 22, 1900, at the chambers thereof in the United States post office and court building, for an order directing that the complaint herein be printed in a condensed form as set forth in the annexed condensation thereof.

Dated October 19, 1900.

Yours truly,

A. BELL MALCOMSON,
Attorney for Plaintiff.

Defendant not objecting, it is ordered accordingly.

E. HENRY LACOMBE, *U. S. C. J.*

October 22, 1900.

6 Circuit Court of the United States for the Southern District of New York.

JAMES MCLAUGHLIN
against
RAPHAEL TUCK AND SONS COMPANY, LIMITED. } Complaint.

The plaintiff, by A. Bell Malcomson, his attorney, complains of the defendant and says, as follows:

I. The plaintiff is a citizen of the United States and is entitled to recover from defendant the amounts hereinafter set forth by virtue

of the statute of the United States in such cases made and provided, the facts in relation to which are hereinafter stated.

II. That defendant is a corporation formed under the laws of New York, and carrying on the business in the city of New York, and elsewhere, of printing and publishing books, prints and other articles.

III. That as a first cause of action, upon information and belief, plaintiff alleges that heretofore and on or about the first day of August, 1896, the defendant, at the city of New York, in the State of New York, did publish and issue a certain picture book or booklet entitled "Little Red Riding Hood," which was number 1700 on defendant's catalogue, and in and upon said book did knowingly insert and impress a false and fictitious notice that the same was copyrighted, which notice was in the following words, "Copyright 1896 by Raphael Tuck & Sons, Ltd."

7 IV. That the said book being a proper subject of a copyright was not copyrighted by the said "Raphael Tuck & Sons Co., Ltd." or by "Raphael Tuck & Sons Co., Ltd." or by the defendant that the defendant has not obtained a copyright upon said book or any part thereof, and that the notice impressed thereon by defendant was and is false and contrary to the statutes of the United States in such case made and provided and more particularly to section 4963 of the Revised Statutes of the United States.

V. That by reason of the premises and by force of the statute in such cases made and provided and more particularly section 4963 of the Revised Statutes of the United States, an action hath accrued to the plaintiff to recover from the defendant the sum of one hundred dollars forfeited as aforesaid by virtue of said statute, the said one hundred dollars being part and parcel of the sum herein demanded.

The second to the seventieth cause of action consist- of allegations substantially the same as above statement of first cause of action in relation to books of the following numbers and names:

Second cause of action, Book No. 1701, Cinderella.
Third cause of action, Book No. 1702, Little Bo Peep.
Fourth cause of action, Book No. 1703, Little Boy Blue.
Fifth cause of action, Book No. 1704, Little Miss Muffet.
Sixth cause of action, Book No, 1705, Dick Whittington.
Seventh cause of action, Book No. 1712, Little Daisy Maid.
Eighth cause of action, Book No. 1713, Little Flower Girl.
Ninth cause of action, Book No. 1714, Little Fisher Girl.
Tenth cause of action, Book No. 1715, Little School Girl.
8 Eleventh cause of action, Book No. 1716, Little Sheperdess.
Twelfth cause of action, Book No. 1717, Little Gardener.
Thirteenth cause of action, Book No. 1730, Tom Thumb.
Fourteenth cause of action, Book No. 1731, Little Snow Drop.
Fifteenth cause of action, Book No. 1732, Robinson Crusoe.
Sixteenth cause of action, Book No. 1733, Father Tuck's Nursery Rhymes.
Seventeenth cause of action, Book No. 1734, A Day at the Farm.

Eighteenth cause of action, Book No. 1735, Playtime.
Nineteenth cause of action, Book No. 1736, Fun and Frolic.
Twentieth cause of action, Book No. 1737, Christmas Joys.
Twenty-first cause of action, Book No. 1738, Rip Van Winkle.
Twenty-second cause of action, Book No. 1739, Ali Baba and the Forty Thieves.
Twenty-third cause of action, Book No. 1740, Aladdin.
Twenty-fourth cause of action, Book No. 1741, Dolly's Dress Maker.
Twenty-fifth cause of action, Book No. 1742, Father Tuck's A B C at the Zoo.
Twenty-sixth cause of action, Book No. 1743, Spelling Bee A B C.
Twenty-seventh cause of action, Book No. 1744, Night Before Christmas.
Twenty-eighth cause of action, Book No. 1745, Our Country Cousins A B C.
Twenty-ninth cause of action, Book No. 1747, Three Jolly Sailors.
Thirtieth cause of action, Book No. 1748, Peaches.
Thirty-first cause of action, Book No. 1749, Rambles and Gambols.
9 Thirty-second cause of action, Book No. 1750, Baby's A B C.
Thirty-third cause of action, Book No. 1751, Somebody's Darling.
Thirty-fourth cause of action, Book No. 1752, from the Land of Sunshine.
Thirty-fifth cause of action, Book No. 1754, Father Christmas.
Thirty-sixth cause of action, Book No. 1755, Dolly in the Country.
Thirty-seventh cause of action, Book No. 1756, Dolly in Town.
Thirty-eighth cause of action, Book No. 1760, A B C of Fairy Tales.
Thirty-ninth cause of action, Book No. 1761, Life at the Farm.
Fortieth cause of action, Book No. 1764, Spelling Bee.
Forty-first cause of action, Book No. 1763, Picture Land A B C.
Forty-second cause of action, Book No. 1765, Father Tuck's A B C at the Zoo.
Forty-third cause of action, Book No. 1768, Country Life.
Forty-fourth cause of action, Book No. 1769, Seaside Pleasures.
Forty-fifth cause of action, Book No. 1770, Jolly Companions.
Forty-sixth cause of action, Book No. 1771, Comical Kittens.
Forty-seventh cause of action, Book No. 1772, Peep Show Pictures.
Forty-eighth cause of action, Book No. 1773, Play and Pleasure.
Forty-ninth cause of action, Book No. 1774, Fun in the Forest.
Fiftieth cause of action, Book No. 1775, Pleasure Pages.
Fifty-first cause of action, Book No. 1776, Many Surprises.
10 Fifty-second cause of action, Book No. 1777, Country Cousins A B C.
Fifty-third cause of action, Book No. 1778, Wild Animals at Home.
Fifty-fourth cause of action, Book No. 1779, Jungle Stories.
Fifty-fifth cause of action, Book No. 1780, Tom Thumb.

Fifty-sixth cause of action, Book No. 1781, Little Snow Drop.
Fifty-seventh cause of action, Book No. 1782, Robinson Crusoe.
Fifty-eighth cause of action, Book No. 1783, Father Tuck's Nursery Rhymes.
Fifty-ninth cause of action, Book No. 1784, Rip Van Winkle.
Sixtieth cause of action, Book No. 1785, Ali Baba and the 40 Thieves.
Sixty-first cause of action, Book No. 1786, Aladdin.
Sixty-second cause of action, Book No. 1787, Father Tuck's Nursery Lessons.
Sixty-third cause of action, Book No. 1789, A B C of Fairy Tales.
Sixty-fourth cause of action, Book No. 1790, Picture Land A B C.
Sixty-fifth cause of action, Book No. 1791, Life at the Farm.
Sixty-sixth cause of action, Book No. 1793, All Sorts of Stories.
Sixty-seventh cause of action, Book No. 1794, Woodland Stories.
Sixty-eighth cause of action, Book No. 1795, Little Folks and their Friends.
Sixty-ninth cause of action, Book No. 1896, Royal Children of English History.

The statement of the seventieth cause of action is as follows:

11 CCXII. That as a seventieth cause of action upon information and belief, the plaintiff alleges that heretofore and on or about the first day of August, 1896, the defendant, at the city of New York, in the State of New York, did publish and issue a certain picture book or "booklet" entitled "Days of Delight," which was number 1797 on their catalogue, and in and upon said book did knowingly insert and impress a false and fictitious notice that the same was copyrighted, which notice was in the following words: "Copyright 1896 by Raphael Tuck & Sons, Ltd."

CCXIII. That said book being a proper subject of a copyright was not copyrighted by the said "Raphael Tuck & Sons, Ltd." or by "Raphael Tuck & Sons Co." or by the defendant. That the defendant has not obtained a copyright on said book or any part thereof, and that the notice impressed thereon by defendant was and is false and contrary to the statutes of the United States in such case made and provided, and more particularly to section 4963 of the Revised Statutes of the United States.

CCXIV. That by reason of the premises and by force of the statute in such case made and provided and more particularly section 4963 of the Revised Statutes of the United States, an action hath *occurred* to the plaintiff to demand and have from the defendant the sum of one hundred dollars forfeited as aforesaid by virtue of said statute, the said one hundred dollars being part and parcel of the sum herein demanded.

The seventy-first and seventy-second causes of action are stated in the same words as the seventieth except that they mention books entitled "Baby's A B C," numbered 1750, and "Father Tuck's Christmas," numbered 1754.

The seventy-third cause of action is stated as follows:

CCXXI. That as a seventy-third cause of action upon information and belief, plaintiff alleges that heretofore and on or about the 26th day of April, 1897, the defendant at the city of New York, in the State of New York, did knowingly issue and sell a certain picture book or "booklet" entitled "Rip Van Winkle," numbered 1738 on defendant's catalogue, which said book or article bore a notice of United States copyright, said notice being in the following words: "Copyright 1896 by Raphael Tuck & Sons, Ltd."

CCXXII. That said book or booklet being a proper subject of copyright was not nor was any part thereof copyrighted in this country by the said "Raphael Tuck & Sons, Ltd.," or by "Raphael Tuck & Sons Co.," or by any other person or persons; that the defendant has not obtained a copyright on said book or any part thereof and that the said notice of copyright impressed thereon was and is false and contrary to the statutes of the United States and more particularly to section 4963 of the Revised Statutes of the United States as amended, all of which facts were well known to the defendant at the time of such issue and sale.

CCXXIII. That by reason of the premises and by force of the statutes in such case made and provided and more particularly section 4963 of the Revised Statutes of the United States as amended, an action hath accrued to the plaintiff to demand and have from the defendant the sum of one hundred dollars forfeited as aforesaid by virtue of said statute, the said one hundred dollars being part and parcel of the sum herein demanded.

The causes of action from the seventy-fourth to the eighty-third, inclusive, are stated in the same words as the seventy-third clause of action except that they mention books entitled as follows:

Seventy-fourth cause of action, Book No. 1739, Ali Baba and the 40 Thieves.

Seventy-fifth cause of action, Book No. 1740, Allad-in and the Wonderful Lamp.

Seventy-sixth cause of action, Book No. 1741, Dolly's Dress Maker.

Seventy seventh cause of action, Book No. 1742, Father Tuck's A B C at the Zoo.

Seventy-eighth cause of action, Book No. 1747, Three Jolly Sailors.

Seventy-ninth cause of action, Book No. 1748, Peaches.

Eightieth cause of action, Book No. 1749, Rambles and Gambols.

Eighty-first cause of action, Book No. 1750, Baby's A B C.

Eighty-second cause of action, Book No. 1751, Somebody's Darling.

Eighty-third cause of action, Book No. 1752, The Land of Sunshine.

That all of the several acts of the defendant, of inserting and impressing said false and fictitious notice of copyright upon said books, and the knowingly issuing and selling of books with the said fictitious notice of copyright thereon, was against the form of the Revised

Statutes of the United States and contrary to the provisions of section 4963 of said Revised Statutes:

Wherefore, plaintiff demands judgment against the defendant for the sum of eight thousand three hundred dollars, together with the costs of this action to be distributed as the law directs.

A. BELL MALCOMSON,
Attorney for Plaintiff.

STATE OF NEW YORK, }
City and County of New York, } ss:

James McLoughlin, being duly sworn, deposes and says: That he is the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be
14 alleged on information and belief, and as to those matters he believes it to be true.

JAMES McLOUGHLIN.

Subscribed and sworn to before me this 20th day of July, 1898.
PETER A. ROSS,
Notary Public.

(Endorsed:) United States circuit court of appeals.—James McLoughlin, plaintiff in error, against The Raphael Tuck & Sons Co., Ltd., defendant in error.—Notice of motion and complaint.—A. Bell Malcomson, attorney for plaintiff, 132 Nassau street, New York city.—Due and timely service of a copy of the within notice is hereby admitted.—Dated Oct. 20, 1900.—Goepel & Raegener, att'ys for def't.—U. S. circuit court.—Filed Oct. 22, 1900.—John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

JAMES McLOUGHLIN, Plaintiff,
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant. }

We hereby consent that Messrs. Goepel & Raegener be substituted as attorneys for the defendant in our place.
Dated Sept. 22, 1898.

WETMORE & JENNER,
Def't's Sol'rs.

It is so ordered.
Dated Sept. 27, 1898.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States circuit court, southern district of N.Y.—James McLaughlin *vs.* Raphael Tuck & Sons Co., Ltd.—Consent and order of substitution—U. S. circuit court.—Filed Sep. 27, 1898.—John A. Shields, clerk.

15 Circuit Court of the United States for the Southern District of New York.

JAMES McLOUGHLIN
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED.

The defendant, by Goepel & Raegener, its attorneys, answering the plaintiff's complaint:

I. It has no knowledge, information or belief with respect to the matters set forth in the first paragraph of the complaint and therefore denies the same.

II. It admits that it is a corporation formed under the laws of New York and carrying on business in the city of New York and elsewhere, but it denies that it is engaged in the business of printing books.

III. It admits that at some time in the year 1896 it did at the city of New York sell certain pictures books and booklets entitled and numbered as follows:

Little Red Riding Hood	No. 1700
Cinderella	No. 1701
Little Bo-Peep	No. 1702
Little Boy Blue	No. 1703
Little Miss Muffett	No. 1704
Dick Whittington	No. 1705
Little Daisy Maid	No. 1712
Little Flower Girl	No. 1713
Little Fisher Girl	No. 1714
16 Little School Girl	No. 1715
Little Shepherdess	No. 1716
Little Gard-ner	No. 1717
Tom Thumb	No. 1730
Little Snow Drop	No. 1731
Robinson Crusoe	No. 1732
Father Tuck's Nursery Rhymes	No. 1733
A Day at the Farm	No. 1734
Play Time	No. 1735
Fun and Frolic	No. 1736
Christmas Joys	No. 1737
Rip Van Winkle	No. 1738
Ali Baba and the Forty Thieves	No. 1739
Aladdin	No. 1740
Dolly's Dressmaker	No. 1741
Father Tuck's A B C at the Zoo	No. 1742
Spelling Bee A B C	No. 1743
Night before Christmas	No. 1744
Our Country Cousins A B C	No. 1745
Three Jolly Sailors	No. 1747

	Peaches	No. 1748
	Rambles and Gambols	No. 1749
	Baby's A B C	No. 1750
	Somebody's Darling	No. 1751
	From the Land of Sunshine	No. 1752
	Father Christmas	No. 1754
	Dolly in the Country	No. 1755
	Dolly in Town	No. 1756
	A B C of Fairy Tales	No. 1760
	Life at the Farm	No. 1761
	Spelling Bee	No. 1764
	Picture Land A B C	No. 1763
	Father Tuck's A B C at the Zoo	No. 1765
	Country Life	No. 1768
	Seaside Pleasures	No. 1769
	Jolly Companions	No. 1770
	Comical Kittens	No. 1771
	Peepshow Pictures	No. 1772
	Play and Pleasure	No. 1773
	Fun in the Forest	No. 1774
	Pleasure Pages	No. 1775
17	Many Surprises	No. 1776
	Country Cousins A B C	No. 1777
	Wild Animals at Home	No. 1778
	Jungle Stories	No. 1779
	Tom Thumb	No. 1780
	Little Snow Drop	No. 1781
	Robinson Crusoe	No. 1782
	Father Tuck's Nursery Rhymes	No. 1783
	Rip Van Winkle	No. 1784
	Ali Baba and the Forty Thieves	No. 1785
	Aladdin	No. 1786
	Father Tuck's Nursery Lessons	No. 1787
	A B C of Fairy Tales	No. 1789
	Picture Land A B C	No. 1790
	Life at the Farm	No. 1791
	All Sorts of Stories	No. 1793
	Wood Land Stories	No. 1794
	Little Folks and their Friends	No. 1795
	Royal Children of English History	No. 1796
	Days of Delight	No. 1797
	Baby's A B C	No. 1750
	Father Christmas	No. 1754
	Rip Van Winkle	No. 1738
	Ali Baba and the Forty Thieves	No. 1739
	Aladdin and the Wonderful Lamp	No. 1740
	Dolly's Dressmaker	No. 1741
	Father Tuck's A B C at the Zoo	No. 1742
	Three Jolly Sailors	No. 1747
	Peaches	No. 1748

Rambles and Gambols..... No. 1749
Baby's A B C..... No. 1750
Somebody's Darling..... No. 1751
The Land of Sunshine..... No. 1752

It has no knowledge, information or belief whether the said books and booklets or any of them were sold by it on August 1, 1896, and therefore denies the same.

It denies each and every other allegation contained in the paragraphs of the complaint numbered respectively as follows:

18 3, 6, 9, 12, 15, 17, 21, 24, 27, 30, 34, 37, 40, 43, 46, 49, 52, 55, 58, 61, 64, 67, 70, 73, 76, 79, 82, 85, 88, 91, 94, 97, 100, 103, 106, 109, 112, 115, 118, 121, 124, 127, 130, 133, 136, 139, 142, 145, 148, 151, 154, 157, 160, 163, 166, 169, 172, 176, 179, 182, 185, 188, 191, 194, 197, 200, 203, 206, 209, 212, 215, 218, 221, 224, 227, 230, 233, 236, 239, 242, 245, 248 and 251.

IV. It admits that the books and booklets referred to in the complaint and enumerated in the last paragraph of this answer are proper subjects of a copyright, that it did not obtain a copyright upon them, or any of them, and that the copyright notice upon them or any of them is false; but it denies each and every other allegation contained in the paragraphs of said complaint numbered respectively 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 35, 38, 41, 44, 47, 50, 53, 56, 59, 62, 65, 68, 71, 74, 77, 80, 83, 86, 89, 92, 95, 98, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 131, 134, 137, 140, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 177, 180, 183, 186, 189, 192, 195, 198, 201, 204, 207, 210, 213, 216, 219, 222, 255, 228, 231, 234, 237, 240, 243, 246, 249 and 252.

V. It denies all the allegations contained in the paragraphs of the complaint numbered respectively 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 36, 39, 42, 45, 48, 51, 54, 57, 60, 63, 66, 69, 72, 75, 78, 81, 84, 87, 90, 93, 96, 99, 102, 109, 108, 111, 114, 117, 120, 123, 126, 129, 132, 135, 138, 141, 144, 147, 150, 153, 156, 159, 162, 165, 168, 171, 175, 178, 181, 184, 187, 190, 193, 196, 199, 202, 205, 208, 211, 214, 217, 220, 223, 226, 229, 232, 235, 238, 241, 244, 247, 250 and 253.

VI. As a separate defense, it alleges that this action and no part thereof can be maintained for the penalties claimed or any part thereof, for the reason that this action was not commenced within two years after the alleged causes of action set forth in the complaint have arisen.

19 VII. The defendant, further answering the 79th, 80th and 81st paragraphs of the complaint herein, and as a further and separate defense to the 26th cause of action set forth and alleged in said paragraphs of the complaint, avers that heretofore, and on or about the 10th day of September, 1896, one Peter A. Ross, suing on behalf of himself and the United States of America, brought suit against this defendant in the circuit court of the United States for the southern district of New York to recover the penalties provided for in section 4963 of the Revised Statutes of the United States for an alleged violation of said statute-, by reason of the alleged insert-

ing and impressing by this defendant of a certain false and fictitious notice of copyright upon certain books and booklets; that among other causes of action stated in the complaint of said suit was the first cause of action, which said first cause of action was the same cause of action set forth and alleged in the 79th, 80th and 81st paragraphs of the complaint in this suit now pending; that said first cause of action in said former suit was set forth and alleged in the third, fourth and fifth paragraphs of the complaint in said suit in precisely the same words in which the 26th cause of action in this pending suit is set forth and alleged, with the sole exception that the words, "which was No. 1743 on their catalogue," contained in the 6th and 7th lines of the 79th paragraph of the complaint herein, did not appear in the complaint of said former suit. That said picture book or booklet, entitled, "Spelling Bee A, B, C," referred to and set forth in the complaint in said former suit, was No. 1743 on defendant's catalogue and was the same picture book or booklet referred to and set forth in the 26th cause of action in this pending suit, and that the said former suit was brought to recover the same penalty as is sought to be recovered in the 26th cause of action in this pending suit. That said former suit was duly brought on for trial and tried at a stated term of said court, on the 27th day
20 of October, 1897, before the Honorable E. Henry Lacombe, one of the judges of said court, and a jury, and that the jury thereupon rendered a verdict in favor of this defendant; for which reason the alleged 26th cause of action set forth and described in the complaint herein is *res adjudicata*.

Wherefore, the defendant demands that the complaint be dismissed, with costs.

GOEPEL & RAEGENER,
Defendant's Attorneys, 290 *Broadway*,
New York City, Manhattan.

SIRS: Please take notice that the defendant hereby elects to serve an unverified answer to the plaintiff's complaint herein, the action being to recover a penalty.

Dated New York, September 30, 1898.

Yours, &c.,

GOEPEL & RAEGENER,
Attorneys for Defendant, 290 *Broadway*,
New York City, Manhattan.

To A. Bell Malcomson, Esq., attorney for plaintiff, 113 Nassau St.

21 U. S. Circuit Court, Southern District of New York.

JAMES McLOUGHLIN
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED. } Affidavit of Service.

STATE OF NEW YORK,
County of New York, } *ss:*

Max H. Wurzel, of the city of New York, being duly sworn, says: That he is above the age of 18 years, and that on the 30th day of September, in the year one thousand eight hundred and ninety-eight, he served the annexed answer on A. Bell Malcomson, plaintiff's attorney in this action, by depositing in the general post office, in the borough of Manhattan, in the city of New York, a copy of said answer enclosed in a securely sealed post-paid wrapper addressed to said attorney, at his office address, No. 132 Nassau street, New York city, Manhattan.

MAX H. WURTZEL.

Sworn to before me this tenth day of October, 1898.

JAMES BEVERIDGE,
Notary Public, Kings County.

Certificate filed in New York county.

(Endorsed:) United States circuit court, southern district of N. Y.—James McLoughlin *vs.* Raphael Tuck & Sons Co., Ltd.—Answer.—Goepel & Raegener, att'ys for deft 290 Broadway, New York.—U. S. circuit court.—Filed May 1, 1900.—John A. Shields, clerk.

22 At a stated term of the circuit court of the United States of America for the southern district of New York, in the borough of Manhattan, in the city of New York, on Wednesday, the 11th day of April, in the year of our Lord one thousand nine hundred.

Present: The Honorable E. Henry Lacombe, circuit judge.

JAMES McLOUGHLIN
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED. }

Now comes the plaintiff, by A. Bell Malcomson, Esq., his attorney. Likewise come the defendants, by Louis C. Raegener, Esq., their attorney.

Thereupon a jury is impaneled and the cause proceeds to trial.

After hearing the evidence for the respective parties Mr. Raegener moves to direct a verdict for the defendants. Motion granted.

Thereupon, by direction of the court, the jury say they find a verdict for the defendant, and so they say all.

A stay of 60 days granted the plaintiff, within which to make and serve a case with leave to turn the same into a bill of exceptions.

(An extract from the minutes.)

[SEAL.] JOHN A. SHIELDS, *Clerk.*

23 Circuit Court of the United States, Southern District of New York.

JAMES MCLOUGHLIN
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED.

This cause having been regularly brought on for trial, and tried at a stated term of the circuit court of the United States for the southern district of New York, held at the court rooms of said court, in the city of New York and southern district of New York, before Hon. E. Henry Lacombe and a jury, on the 11th day of April, 1900; and the jury having returned a verdict in favor of the defendant, and the costs and disbursements having been duly taxed at the sum of $49.85;

Now, upon motion of Messrs. Goepel & Raeg-ner, attorneys for the defendant, it is

Ordered, adjudged and decreed, that the defendant Raphael Tuck & Sons Co. Ltd., do recover of the plaintiff, James McLoughlin, the sum of $49.85, its costs and disbursements as taxed herein by the clerk of this court, and that said defendant have execution therefor.

Judgment signed this 1st day of May, A. D. 1900.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) United States circuit court, southern district of New York.—James McLoughlin *vs.* Raphael Tuck & Sons Co., Ltd.—Judgment.—Goepel & Raegener, att'ys for def't., 290 Broadway, New York.—U. S. circuit court, Filed May 1, 1900, 11 a. m.—John A. Shields, clerk.

24 United States Circuit Court, Southern District of New York.

JAMES MCLOUGHLIN, Plaintiff,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant.

Bill of Exceptions.

Be it remembered that afterward, to wit, on the 11th day of April, 1900, at a stated term of this court, begun and held in the city of New York, in and for the southern district of New York, before his honor, E. Henry Lacombe, judge, and a jury, the issues joined in the above stated cause between the above said parties came on to be

tried, the plaintiffs being represented by A. Bell Malcomson, Esq., and the defendant being represented by Louis C. Raegener, Esq., and upon the trial of said issues, the attorney for the said plaintiff to maintain and prove said issues upon his part offered in evidence.

At the opening of the trial of this case the following admissions of fact were made on behalf of the parties in order to save the introduction of testimony in relation thereto.

Mr. MALCOMSON: The allegation of the complaint is that on or about the first day of August, 1896, the defendant published and issued a certain book, and that he inserted and impressed upon that book the false copyright mark.

The COURT: That is your case.

Mr. MALCOMSON: Yes, sir.

25 The COURT: What is the name of that book?

Mr. MALCOMSON: The number is 1700, and the name of the book is "Little Red Riding Hood."

The COURT: That was sold at the time and with the notice impressed?

Mr. MALCOMSON: Yes, sir.

The COURT: Now, Mr. Raeg-ner, you admit the sale on that date?

Mr. RAEGENER: Yes, sir.

The COURT: You admit that the copyright notice was not true—it had not been copyrighted here?

Mr. RAEGENER: If you will look at the original answer, you have the numbers and everything.

The COURT: You also admit that the copyright notice on that was false, do you?

Mr. RAEGENER: Yes, sir.

The COURT: Do you admit that the book came from abroad?

Mr. MALCOMSON: In 1896, yes.

The COURT: Is there anything else you need to make out your cause of action as to that?

Mr. MALCOMSON: Yes, sir.

The COURT: What else?

Mr. MALCOMSON: The testimony of the manufacturer in Germany that he received his direction to put that notice on that book from this defendant.

The COURT: Will you concede, for the purposes of the present trial of this cause of action, without prejudice to controverting it hereafter at any future time, that the notice was impressed upon that book under the authority of the defendant?

Mr. RAEGENER: I will.

The COURT: Very well; that is conceded. That is your first cause of action.

Mr. MALCOMSON: That is the first cause of action, and the same allegations are made down to the 70th cause of action.

The COURT: Will you make the same admission down to that, Mr. Raegener?

Mr. RAEGENER: I will.

The COURT: Do you in like manner make the same admission that those books came from abroad into this country prior to March 3, 1897?

26

Mr. MALCOMSON: Yes, sir.

The COURT: Now, we have the testimony taken in seventy causes of action. Now, the 71st.

Mr. MALCOMSON: The 71st cause of action, the complaint alleges that heretofore, and on or about the 11th day of June, 1897, the defendant, at the city of New York and State of New York, did knowingly issue and sell a certain picture book entitled "Baby's A B C." numbered 1750 on defendant's catalogue, which said book bears a notice of United States copyright, said notice being in the following words: "Copyright, 1896, by Raphael Tuck & Sons Co., Limited."

The COURT: Don't read any more than is necessary.

Mr. MALCOMSON: "All of which facts were well known to the defendant at the time of such issue and sale." That is No. 1750.

Mr. RAEGENER: What is the date?

The COURT: June 11, 1897, the date of sale, the 71st cause of action.

Mr. MALCOMSON: And that was in violation of the Revised Statutes as amended in 1897.

Mr. RAEGENER: What is the 72d? Give the number and the name and the date.

Mr. MALCOMSON: The next number, in the 72d cause of action, is 1754, "Father Christmas." The same allegation.

The COURT: That is the same.

Mr. MALCOMSON: The same date, the 11th of June.

The COURT: These two are alike as to date and everything else.

Mr. RAEGENER: I make the same admission. I am ready to prove in two minutes that those books were imported in 1896.

The COURT: You make the same admission?

Mr. RAEGENER: Yes, sir.

The COURT: You, however, do not admit that the books were imported from abroad prior to March 3, 1897?

27

Mr. MALCOMSON: I do not.

The COURT: Your cause of action as to that is complete.

Mr. RAEGENER: All the causes of action from the 73d to the 83d, inclusive, allege sale on or about April 26, 1897. I make the same admission with reference to them, and I have carefully collated the numbers.

The COURT: Let us have the numbers.

Mr. RAEGENER: 1738, 1739, 1740, 1741, 1742, 1747, 1748, 1749, 1750, 1751, 1752.

The COURT: 1750 was the first cause of action.

Mr. MALCOMSON: These books, some of them are in linen and some in paper.

Mr. RAEGENER: 1752 is the 83d and last cause of action. They are all as of April 26th, 1897.

The COURT: You admit the sale and admit false notice?

Mr. RAEGENER: Yes, sir.

The COURT: You admit that it was impressed by the authority of the defendant?

Mr. RAEGENER: Yes, sir.

The COURT: It puts you to the proof to show affirmatively that they got in here before March 3d, 1897.

Mr. RAEGENER: As soon as you ask me to call my witness I will do so.

The COURT: That makes out your cause of action?

Mr. RAEGENER: Yes, the whole eighty-three.

The COURT: There were only eighty-three?

Mr. MALCOMSON: Eighty-three, yes.

The COURT: And the plaintiff rests.

(Plaintiff rests.)

28 SAMUEL GABRIEL, sworn and examined as a witness for the defendant.

Mr. RAEGENER: It is understood that we are limited to this particular inquiry, your honor?

The COURT: Yes, the cross cannot go beyond the direct.

By Mr. RAEGENER:

Q. What connection have you with the defendant?

A. I am secretary and treasurer of the Raphael Tuck & Sons Company, Limited, New York.

Q. You are familiar with the subject matter of this controversy and you have heard some of the admissions here?

A. Yes, sir.

Q. The admissions that were made just now are as follows: That the defendant sold a book known as No. 1750, and another known as 1754, on June 11th, 1897. Will you please tell us when those two books were imported into the United States?

Mr. MALCOMSON: You are referring to exhibits now. There is a difficulty about putting the exhibits in. There were probably thousands of those books.

Mr. RAEGENER: Any of that number—1750 or 1754?

The WITNESS: Am I permitted to tell the story in my own way?

The COURT: No. Answer the question.

Q. Those that you sold on the 11th of June, 1897. Before what date, in what year were they imported?

A. They must have been imported in 1896. There is one exception to that, 1742.

The COURT: You are asked about 1750 and 1754. Give careful attention to the question and only answer the question. Nobody asked you about 1742.

The WITNESS: The books were imported in 1896.

Q. The books which I have referred to in my question?

A. Yes, sir.

29 Q. You know the numbers and the names of the books which are referred to in the 83 causes of action in this suit, do you not?

Objected to. Objection overruled. Exception by plaintiff.

A. I do.

Q. Please tell the court and jury what number, what book, was imported in the year 1897, with the number the same or like that referred to in the complaint?

Mr. MALCOMSON: I object to that. That does not meet the point at all. It is irrelevant? "With the number"—we have here a book with the name.

Mr. RAEGENER: You can cross-examine about it.

Mr. MALCOMSON: Your question is misleading. Give him the name.

Objection overruled. Exception by plaintiff.

A. 1742.

By the COURT:

Q. These numbers which we have heard so much about I suppose are your stock numbers or sample numbers, by which you know the various books?

A. The stock numbers, by which we recognize them.

By Mr. RAEGENER:

Q. Then, in order that we may understand you correctly, you wish to say that with the exception of a book or books bearing the number 1742 all the other books that have been referred to in this litigation were imported in 1896; is that so?

A. Yes, sir.

Q. Now, we come down to the Book 1742. Do you know when the book or books with that number were imported into this country?

A. Yes, sir.

Q. When?

A. In May, 1897.

Q. Did those books have the copyright notice on?

A. No, sir.

30 Q. Then the book referred to as 1742, and which is referred to in the 77th cause of action, and which it is alleged the defendants sold on or about April 26, 1897, did not have the copyright notice on?

A. It certainly did not.

Mr. MALCOMSON: I move to strike that testimony out as not being relevant, because plaintiff has admitted here certain facts, without putting a witness on the stand, and putting exhibits in evidence, which we have done on your honor's suggestion, so as to save time. We should not be prejudiced by that course. The witness is asked a general question as to certain books. Now the books are here and

the proper evidence is, "Will you say that that book"—which we would have proved was purchased from them at a certain time——

The COURT: You will have an opportunity on cross-examination to show him any book you want to. You can go into details.

Mr. RAEGENER: Produce your 1742 and show it to him. You have not got it.

Mr. MALCOMSON: I make the motion that it is irrelevant.

The COURT: Motion denied. Exception.

Mr. RAEGENER: We expected all the invoices to be produced here in court. Now, I state to the court the invoices are here, and not a single one of the 1897 invoices that we have show any number that has been referred to except the number 1742. With respect to that number, if he is not satisfied with this proof here, I have the bookkeeper and the men that handled the books who will swear that the 1742 book, the one book which happened to come in the May invoice in May, 1897, did not have the mark on. Not another book that is referred to here by number did we import in 1897.

The COURT: Now proceed with your cross-examination.

31 Mr. MALCOMSON: We had testimony before that the defendant knew nothing whatever about the manufacture of these books.

The COURT: Go on with your cross-examination.

Cross-examination by Mr. MALCOMSON:

Q. Look at the book I show you now; take it in your hand. That is one of the books that was sold by your firm, by the defendant, and that is one of the books that admittedly was sold in 1897.

Objected to. Objection overruled.

A. Yes, sir.

Q. And it is one of the books that you referred to when you were examined on direct, as having been sold by your firm in April, 1897?

A. I don't know what you refer to.

By the COURT:

Q. Can you tell what time that book was sold?

A. This particular book?

Q. Yes.

A. No, sir.

Q. Can you tell whether or not it was imported prior to March 3, 1897?

A. Yes, sir; it was imported in 1896.

By Mr. MALCOMSON:

Q. How can you tell?

A. Because none of the publications ordered in 1895 and imported in 1896 were brought here in 1897.

Q. How do you know that?

A. In the first instance, because it is the rule; in the second instance, I have taken trouble to examine that and have gone into it very carefully.

Q. And have you personal knowledge in relation to that book?

A. I have.

Q. Tell us when that book itself was imported, according to your personal knowledge?

A. The book was imported throughout the year 1896.

Q. What time throughout the year?

A. Between——

Q. That particular book?

32 A. This particular book. This is one of an edition of probably ten thousand. I could not tell when this particular book arrived.

Q. Then how can you speak of your personal knowledge as to when it was imported if you cannot tell when it arrived?

A. Because they were brought to be delivered for the season of 1896.

Q. Answer my question?

The COURT: Don't interrupt the witness. He is trying to answer the best he can. He cannot tell the day any one book was imported. He tells you the whole edition came from time to time during the year 1896. He cannot tell you that on the 15th of July or the 17th of September this one particular copy came in.

Mr. MALCOMSON: This is an exhibit that is here in evidence, and that is what I want to know about.

The COURT: All he tells you is that that is one of an edition of probably ten thousand, and the whole ten thousand came in in 1896. You might ask him from now until we all got tired sitting here and he could not tell you more than that.

Mr. MALCOMSON: We have nothing to go by except this book, and we want his personal knowledge as to this book. He says he has a general idea.

The COURT: He cannot give you any personal knowledge as to that book; he says it is part of an edition, and the whole edition came here in 1896. I don't see that you can gain anything by further cross-examination on that point.

Mr. MALCOLM-: I will offer this book in evidence. The method of proceeding has rather interfered with the plaintiff's case. I wanted to do it in order to save time.

The book is marked Exhibit I.

Q. Please look at the rest of these books that I show you and state if you have any personal knowledge of when those books were imported to this country (showing witness books)?

A. I have.

Q. Those individual books?

A. Yes, sir; I have.

33 Q. Did you see them imported? Did you see them pass through the custom house?

A. No, sir, but I saw the majority when they arrived from the custom house.

Q. Did you see all those books marked as those books are as they passed through or were received by the defendant from the custom house?

A. I saw the largest number of them as they arrived from the custom house.

Q. Answer my question?

A. I am not a custom house official. I don't see them pass through the custom house.

Q. Did you have anything to do with the entry? Did you go to the custom house and assist in the entry and passage through the custom house of those books?

A. Quite possibly.

Q. It may be possible, but I want to know if it is the fact?

A. When I was in New York I attended to the custom house part of the work.

Q. Will you say that you attended to the custom house work of passing through the custom house those books which are before you now?

A. A portion of them, yes.

Q. Which portion of them?

A. I can't tell you.

Q. Can you tell me that you personally conducted the entry of any one of these books that are before you?

A. No, sir.

Q. You have no personal knowledge of the actual entry, or time of entry of those books which are before you now, have you?

A. Yes; I have personal knowledge that they were all imported during 1896.

Q. That all of those were?

A. All these books.

Q. But that personal knowledge is simply your statement that there was an edition of those books, and your statement that the edition came here in 1896; that is all, is it not?

A. Edition is delivery. It is the same thing.

Q. That is all the knowledge that you have?

A. And a knowledge of the fact that the books were on our premises—in our establishment.

Q. The books were in your establishment in 1897, weren't they?

A. Possibly some were there in 1897, but they were also there in 1896.

34 Q. But they were imported from time to time?

A. Not in 1897; there is no question about that.

Mr. MALCOMSON: That is proving a negative, your honor. I move to strike the answer out.

The COURT: Motion denied. Exception.

Q. I want your personal knowledge as to those individual books?

The COURT: Hasn't he given you that now, as fully as he can?

Mr. MALCOLMSON: I want to know whether he has any personal knowledge as to those individual books. His testimony as to general rules, and editions, and orders for delivery in 1896, does not answer the question as to these particular books.

The COURT: I supposed it sufficiently appeared already on the record that the witness, as to any one of those particular books that lie on the desk before him, cannot swear that he ever saw that one particular book before. I suppose that is so, isn't it?

The WITNESS: Certainly.

Mr. MALCOMSON: And he cannot swear as to when any one of those particular books entered through the custom house.

The COURT: Certainly, that is the same as the other.

Q. You cannot say when any one of those particular books were entered through the custom house?

A. Except that they were entered in 1896.

Plaintiff's counsel moves to strike out the answer.

Motion denied. Exception.

Q. If you cannot say when any one of those individual books passed through the custom house, how can you say, unless you passed every one of such books through the custom house, when they were imported into this country?

A. By referring to the invoices. I have studied these
35 invoices and found that during 1897 not one of the books in the complaint, 1742 excepted, arrived in this country.

Q. Do you mean to say that they could not arrive in this country except by your invoices?

Objected to.

The COURT: You are charging the sale by this house. Of course, the book may have come in somebody's trunk, coming back from Europe.

Mr. MALCOMSON: Exactly.

The COURT: This defendant is not responsible for those books, of course.

Mr. MALCOMSON: The cause of action.

The COURT: Don't take up any more time to argue the question. I have given your cases more time than they are really entitled to, both of them. Go on and try the case, and register the objection.

Mr. MALCOLMSON: This is not for the importation; it is for the sale, and the point of who might have imported them is not material.

The COURT: Go on and ask the question. That this defendant might have imported them is not material in this case.

Mr. MALCOMSON: I want the witness's testimony as to whether he can testify that those books were not brought into this country in 1897?

The COURT: If you want any more ask him another question.

Q. Are you willing to swear of your own personal knowledge that those books were not brought into this country in 1897?

A. No, I will not swear.

Redirect-examination by Mr. RAEGENER:

Q. Your house did not get books in any other way except in the regular course of business and in connection with invoices that passed through the New York custom house?

Objected to. Objection overruled. Exception by plaintiff.

A. Certainly.

(Defendant rests.)

36 Mr. RAEGENER: I move for the direction of a verdict in favor of the defendant.

The COURT: A verdict is directed in favor of the defendant, with an exception to the plaintiff.

The plaintiff is allowed a stay of sixty days to make a case.

In order that matters produced and offered in evidence on the trial and the exceptions to the rulings and decisions of the judge may appear upon the record of the court, the plaintiff has prepared and caused to be settled this bill of exceptions in accordance with the statutes in such case made and provided. The court hereby signs and orders this bill of exceptions to be filed.

E. H. LACOMBE,
U. S. Circuit Judge.

Foregoing case accepted without amendments and above order consented to October 11, 1900.

GOEPEL & RAEGENER.
Def't's Att'ys.

(Endorsed:) U. S. circuit court.—James McLoughlin, plaintiff, against The Raphael Tuck & Sons Co., Limited, defendant.—Case and exceptions.—A. Bell Malcomson, attorney for plaintiff, 132 Nassau street, New York city.—Due and timely service of a copy of the within case and exceptions is hereby admitted. Dated May 28th, 1900. Goepel & Raegener, attorneys for def't.—U. S. circuit court.—Filed Oct. 12, 1900.—John A. Shields, clerk.

37 The Circuit Court of the United States for the Southern District of New York.

JAMES MCLOUGHLIN, Plaintiff, vs. THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendants.	At Law. Assignment of Errors.

Afterwards, to wit, on the 11th day of October, 1900, before the justices of the United States circuit court of appeals in the second

circuit in the United States post office and court house building, in the city of New York, comes the said James McLoughlin, by A. Bell Malcomson, his attorney, and says that, by the record proceedings aforesaid, there is manifest error in this, to wit:

First. That the defendant, having impressed, or authorized the impressing and printing, of the false notice of copyright on the books mentioned in the complaint, it was liable under the statute in force at the time of such impression, and the court erred in directing a verdict for defendant in relation thereto.

Second. That the court erred in directing a verdict for defendant as to the books mentioned in the 71st to the 83d causes of action, inclusive, in view of the admissions and testimony.

38 Third. That the court erred in rendering judgment in favor of the defendant and against the complainant.

A. BELL MALCOMSON,
Attorney for Plaintiff.

(Endorsed:) U. S. circuit court, S. D., N. Y.—James McLoughlin pl'ff, *vs.* The Raphael Tuck & Sons Co., Ltd., def't.—Assignment of errors.—U. S. circuit court.—Filed Oct. 18, 1900.—John A. Shields, clerk.

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

JAMES MCLOUGHLIN, Plaintiff,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant.
} Bond for Damages and Costs.

Know all men by these presents, that we, James McLoughlin, William J. Rigney and F. D. Maher, all of the city of New York, State of New York, are held and firmly bound unto the above named Raphael Tuck & Sons Company, Limited, in the sum of two hundred and fifty dollars, to be paid to the said Raphael Tuck & Sons Company, Limited, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and

39 each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 28th day of September, in the year of our Lord one thousand nine hundred.

Whereas, the above named James McLoughlin has prosecuted a writ of error to the United States circuit court of appeals for the second circuit to reverse the judgment rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York, and filed in the office of the clerk of the said court on the first day of May, 1900, for $49.85;

Now, therefore, the condition of this obligation is such that if the above named James McLoughlin shall prosecute said writ of error

to effect and answer all damages and costs, if he shall fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES McLOUGHLIN.
WILLIAM J. RIGNEY.

Sealed and delivered and taken and acknowledged this twenty-ninth day of September, 1900, before me, — William J. Rigney.

HENRY DISTLER,
[SEAL.] *Notary Public* (*No.* 7), *Kings Co., N. Y.*

Sealed and delivered and taken and acknowledged this second day of October, 1900, before me, — F. D. Maher.

F. D. MAHER.

EMIL T. FUESS,
[SEAL.] *Notary Public* (*No.* 69), *New York Co., N. Y.*

40 UNITED STATES OF AMERICA, } *ss.:*
Southern District of New York, }

William J. Rigney, being duly sworn, does depose and say: That he is worth the sum of more than five hundred dollars over and above all his just debts and liabilities.

WILLIAM J. RIGNEY.

Sworn to this twenty-ninth day of Sept., A. D. 1900, before me

HENRY DISTLER,
[SEAL.] *Notary Public* (*No.* 7), *Kings Co., N. Y.*

F. D. Maher, being duly sworn, does depose and say: That he is worth the sum of more than five hundred dollars over and above all his just debts and liabilities.

F. D. MAHER.

Sworn to this second day of October, A. D. 1900, before me

EMIL T. FUESS,
[SEAL.] *Notary Public* (*No.* 69), *N. Y. Co., N. Y.*

(Endorsed:) U. S. circuit court, southern district of New York.—James McLoughlin, pl'ff, *vs.* The Raphael Tuck & Sons Company Ltd., defendant.—Bond for damages and costs on appeal.—Approved as to form and also as to sufficiency of sureties, with reservation however to the defendant of the right at any time to examine the sureties under oath, touching their assets, liabilities and financial condition generally. E. H. Lacombe, U. S. circuit judge.—U. S. circuit court.—Filed Oct. 18, 1900.—John A. Shields, clerk.

41 United States Circuit Court of Appeals for the Second Circuit.

JAMES MCLAUGHLIN, Plaintiff in Error,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant in Error.

It is hereby stipulated that the books referred to at the trial, and used as exhibits, may be used at the argument on appeal herein and need not be printed.

GOEPEL & RAEGENER,
Defendant's Attorneys.

(Endorsed:) James McLaughlin *vs.* Tuck.—Stipulation.—U. S. circuit court.—Filed Nov. 13, 1900. John A. Shields, clerk.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To The Raphael Tuck & Sons Company, Limited, Greeting:

You are hereby cited and admonished to be and appear before a United States circuit court of appeals for the second circuit, to be holden at the borough of Manhattan, in the city of New York,
42 in the district and circuit above named, on the 12th day of November, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein James McLoughlin is plaintiff and you are defendant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 18th day of October, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fifth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) United States circuit court of appeals for the second circuit.—James McLoughlin, pl'ff in error, *vs.* The Raphael Tuck & Sons Company, def't in error.—Citation.—Service of a copy of within citation hereby admitted this 20th day of Oct., 1900.—Goepel & Raegener, att'ys for def't.

43 United States Circuit Court of Appeals for the Second Circuit, October Term, 1901.

Submitted February 6, 1902; decided April 8, 1902.

JAMES MCLAUGHLIN, Plaintiff in Error,
vs.
RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant in Error. } No. 8.

Error to the circuit court of the United States for the southern district of New York.

Before Judges Wallace, Shipman, and Townsend.

WALLACE, *Circuit Judge:*

This is a writ of error by the plaintiff in the court below to review a judgment for the defendant upon a verdict rendered by the direction of the court. The action was brought to recover penalties because of the sale by the defendant of certain books upon which were impressed a false notice of copyright. The complaint set forth eighty-three causes of action. Of these the first seventy-two allege that the defendant published and issued in August, 1896, at the city of New York, a book or booklet, and in or upon said book did knowingly insert and impress a false and fictitious notice that the same was copyrighted. The remaining eleven causes of action allege that the defendant in April, 1897, at the city of New York, did knowingly issue and sell a certain book or booklet bearing a false and fictitious copyright notice.

The first seventy two causes of action are founded upon the statute as it read before the amendment of March 3rd, 1897. The eleven remaining causes of action are founded upon the amended statute.

44 Prior to the amendment of March 3, 1897, the statute subjected "every person who shall insert or impress such notice, or words of the same purport, in or upon any book * * * for which he has not obtained a copyright in the United States," to a penalty of $100, recoverable one-half for the person who shall sue for such penalty and one-half for the use of the United States. By the amendment of 1897 the statute was extended so as to subject to the penalty not only every person who inserts or impresses such false notice of copyright upon any book, but also every person "who shall knowingly issue or sell any article" bearing such a false notice; "Provided, that this act shall not apply to any importation of or sale of such goods or articles brought into the United States prior to the passage hereof."

Upon the trial of the action it appeared that the defendant imported in 1896 from a foreign country the books described in the

several counts of the complaint; that these books bore a false copyright notice; that this notice was impressed upon them in Germany by the publisher by the authorization of the defendant; and that in 1896 the defendant sold in this country the books described in the first seventy-two counts of the complaint, and subsequent to March 3, 1897, sold in this country the books described in the eleven remaining counts.

We are of the opinion that the court below correctly ruled that upon the facts shown the defendant was not liable. Treating the insertion of the copyright notice in Germany as the act of the defendant, the act was not within the purview of the statute. The penal laws of one State or sovereignty can have no operation in another. As said in *Flash v. Conn.* (109 *U. S.*, 376), "They are strictly local, and affect nothing more than they can reach." In *Charles v. The People* (1 *N. Y.*, 180) the court said: "Our legislature has no extra-territorial jurisdiction; and when it forbids, in unqualified terms, the doing of an act, it must always be understood that the thing is only forbidden within this State." Until the amendment of 1897 the importation or the sale of an imported book, having a
45 copyright notice known to be false impressed upon it, was not prohibited; and the defendant in bringing the books here and selling them here was within its legal right, however reprehensible its conduct may have been. The defendant did not violate the statute by impressing the false notice upon the books in Germany, nor by selling the books in this country knowing the false notice to have been impressed upon them. It committed an act in Germany which if it had been done here would have been penal, but nothing which was done by it here was prohibited by the statute in force in 1896; nor did it by doing both of these things alter the statutory character of either act. The statute did not reach the case, and is not to be extended by interpretation to a transaction outside its scope. It was doubtless in recognition of the defect in the statute, and of the facility with which it could be evaded by unscrupulous book dealers, that the amendments of 1897 were passed. The sale of the books by the defendant subsequent to the amendment would probably have subjected the defendant to the penalty had not the proviso industriously excluded such a sale from the operation of the amendment.

The judgment is affirmed.

A. Bell Malcomson, for the plaintiff in error.
Louis C. Raegener, for the defendant in error.

46 At a stated term of the United States circuit court of appeals, in and for the second circuit, held at the court rooms in the post office building in the city of New York, on the 18th day of April, one thousand nine hundred and two.

Present: Hon. William J. Wallace, Hon. Nathaniel Shipman, Hon. William K. Townsend, circuit judges.

JAMES McLOUGHLIN, Plaintiff in Error,
vs.
RAPHAEL TUCK & SONS CO., Defendant in Error.

Error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States, for the southern district of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said circuit court be and it hereby is affirmed with costs.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

W. J. W.

Endorsed: United States circuit court of appeals, second circuit. James McLoughlin *vs.* R. Tuck & Sons Co. Order for mandate. United States circuit court of appeals, second circuit. Filed Apr. 21, 1902. William Parkin, clerk.

47 Supreme Court of the United States.

JAMES McLOUGHLIN, Plaintiff in Error,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LIMITED, Defendant in Error.

Assignment of Errors.

Afterwards, to-wit, on the 25th day of April, 1902, before the justices of the Supreme Court of the United States at the Capitol, in the city of Washington, comes the said James McLoughlin, by A. Bell Malcomson, his attorney, and says that, by the record proceedings aforesaid, there is manifest error in this, to-wit:—

First. That there is nothing in the said record to justify the conclusion of the honorable circuit court of appeals that the impressing of the false notice of copyright on the books mentioned in the complaint was done outside of the United States.

Second. That it was error in the honorable circuit court of appeals to conclude that the inserting and impressing, on the books mentioned in the complaint, of the false notice of copyright as admitted by defendant, was done or consummated elsewhere than at the city of New York as alleged in the counts of the complaint.

48 Third. That the honorable circuit court of appeals erred in sustaining the judgment and ruling of the trial court in re-

ceiving testimony from defendant contradicting the fact that the Book 1742 had the false notice of copyright on it, and the action of said trial court in refusing to strike out and disregard such testimony.

Fourth. That it was error in the honorable circuit court of appeals to sustain the judgment and ruling of the trial court on the first seventy causes of action and that said circuit court of appeals erred in sustaining the direction of a verdict for defendant by the trial court.

Fifth. That the honorable circuit court of appeals erred in finding there was reliable proof offered on the trial that the books mentioned in the 71st to the 83rd causes of action were brought into this country prior to the passage of the amendatory act, or that the said books were shown to come under the proviso of the amendatory act of March 3, 1897.

A. BELL MALCOMSON,
Attorney for Plaintiff.

Service of a copy of the foregoing assignment of errors is hereby admitted this 23rd day of May, 1902.

DICKERSON, BROWN & RAEGENER,
Defendant's Att'y.

49 Circuit Court of Appeals of the United States of America.

JAMES MCLOUGHLIN, Plaintiff,
vs.
THE RAPHAEL TUCK & SONS CO., LTD., Defendant.
} Bond for Damages and Costs.

Know all men by these presents, that we, James McLoughlin, J. D. Mahler and William J. Rigney, all of the city of New York, State of New York, are held and firmly bound unto the above named Raphael Tuck and Sons Co., Limited, in the sum of two hundred and fifty dollars, to be paid to the said Raphael Tuck & Sons Co., Ltd., for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and two.

Whereas the above named James McLoughlin has prosecuted a writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled suit, by the judges of the circuit court of appeals for the second circuit.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff shall prosecute said writ of error to effect and answer all damages and costs, if he shall fail to make his appeal

good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES McLOUGHLIN.
F. D. MAHLER.
WM. J. RIGNEY.

50 Sealed and delivered, and taken and acknowledged this 26th day of April, 1902, before me

HENRY DISTLER,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Endorsed: U. S. circuit court of appeals, second circuit. James McLoughlin, *vs.* The Raphael Tuck & Sons Co., Ltd., def't. Bond for damages and costs. Approved, April 30, 1902. E. Henry Lacombe, U. S. circuit judge. United States circuit court of appeals, second circuit. Filed May 9, 1902. William Parkin, clerk.

51 At a stated term of the United States circuit court of appeals for the second circuit, held at the court rooms in the post office building, city of New York, on the 2nd day of June, 1902.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. William K. Townsend, judges.

JAMES McLOUGHLIN, Plaintiff in Error,
vs.
THE RAPHAEL TUCK & SONS COMPANY, LTD., Defendant in Error.

On motion of A. Bell Malcomson, attorney for the plaintiff in error, it is hereby

Ordered that the time of said plaintiff in error to make a return to the writ of error issued herein be and it hereby is extended to the 10th day of June, 1902.

E. HENRY LACOMBE, *U. S. C. J.*

(Endorsed:) United States circuit court of appeals, second circuit. McLoughlin, *vs.* Tuck. Order. United States circuit court of appeals, second circuit. Filed Jun- 2, 1902. William Parkin, clerk.

52 By the Honorable E. Henry Lacombe, one of the judges of the United States circuit court of appeals for the second circuit.

To The Raphael Tuck & Sons Co., Ltd., Greeting:

You are hereby cited and admonished to be and appear before a United States supreme court to be holden at the Capitol in the city of Washington on the 13th day of October 1902, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein James McLoughlin is plaintiff and you are defendant to show cause, if any there be, why the judgment in said writ of error mentioned should

not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 30th day of April, in the year of our Lord one thousand nine hundred and two, and of the Independence of these United States the one hundred and twenty sixth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

E. HENRY LACOMBE,
Judge of the Circuit Court of Appeals of the United States for the Second Circuit.

53 [Endorsed:] 1433 United States Supreme Court James McLoughlin *vs.* The Raphael Tuck & Sons Co. Ltd. Citation Service of a copy of within citation hereby admitted this 2nd day of May 1902. Louis C. Raegener attorney for def't. United States circuit court of appeals, second circuit. Filed May 9 1902 William Parkin clerk.

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the United States circuit court of appeals for the second circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals before you, or some of you, between James McLoughlin plaintiff and The Raphael Tuck & Sons Company Limited defendant—a manifest error hath happened, to the great damage of the said James McLoughlin plaintiff as is said and appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 30th day of May 1902, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of April in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN,
Clerk of the Circuit Court of Appeals of the United States of America for the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

55 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, William Parkin, clerk of the circuit court of appeals of the United States of America, for the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the *following* pages, numbered from 1 to 52 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause of James McLoughlin plaintiff in error, against Raphael Tuck & Sons Co., Ltd., defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 4th day of June in the year of our Lord, one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

[Endorsed:] 1433. Supreme Court of the United States. McLoughlin, plaintiff in error, *vs.* Tuck & Sons Co. defendant in error. Writ of error. United States circuit court of appeals, second circuit. Filed May 9 1902 William Parkin, clerk.

Endorsed on cover: File No. 18,586. U. S. circuit court of appeals, second circuit. Term No. 73 James McLoughlin, plaintiff in error, *vs.* The Raphael Tuck & Sons Company, Limited. Filed June 13, 1902.